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I hereby certify that this correspondence is being facsimile transmitted to the Commissioner for Patents in the US Patent and Trademark Office on October 10, 2003

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P&amp;G Case 8160

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of :

MICHAEL L. VATTER :

Confirmation No. 8449

Serial No. 09/902,321 :

Group Art Unit 1619

Filed July 10, 2001 :

Examiner A. Berman

For Emulsion Cosmetic Compositions Comprising an Emulsifying Crosslinked Siloxane  
Eslatomer

RESPONSE TO NOTICE OF NON-COMPLIANCE OF  
BRIEF ON APPEALS TRANSMITTAL

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Enclosed is Response to Notice of Non-Compliance of Brief on Appeals for the above application. This response is being forwarded in triplicate.

No additional fee is believed due at this time as authorization was given to charge the fee of \$320.00 pursuant to 37 C.F.R. 1.17(c) to Deposit Account No. 16-2480 for the filing of the brief in support of an appeal. If additional fees are due the Commissioner is authorized to charge any additional fees which may be required to this account. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

By

Vladimir Vitenberg  
Vladimir Vitenberg  
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Date: October 10, 2003

Customer No. 27752

(BriefonAppealTrans.doc)  
(Last Revised 4/3/2003)

## Certification of Facsimile Transmission

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/902,321  
Applicant(s) : MICHAEL LEE VATTER et al.  
Filed : July 10, 2001  
Title : Emulsion Cosmetic Compositions Comprising an  
Emulsifying Crosslinked Siloxane Esletomer  
TC/A.U. : 1617  
Examiner : Lauren Q. Wells  
Conf. No. : 8449  
Docket No. : 8160  
Customer No. : 27752

**RESPONSE TO NOTIFICATION OF NON-COMPLIANCE OF APPEAL BRIEF**  
**WITH CFR 1.192(c)**

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**INTRODUCTORY REMARKS**

In response to the Notification of Non-Compliance of September 10, 2003, and telephone discussion with Examiner L. Wells on October 9, 2003, a copy of the appealed claims is attached as an appendix.

*Remarks begin on page 2 of this paper.*

*An Appendix is attached following page 3 of this paper.*

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Atty. Docket No. 8160  
Amdt. dated October 10, 2003  
Reply to Notice of Non-Compliance  
of September 10, 2003  
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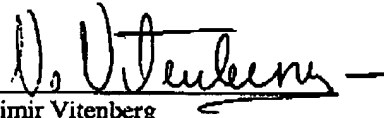
REMARKS

Claims 1 - 14 are pending in the present application. No additional fee is believed to be due.

Respectfully submitted,

MICHAEL LEE VATTER, *et al.*]

By



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**APPENDIX**

**Pending Claims**

**Case 8160**

*(includes amendment of 7/24/02)*

1. A stable multiphase emulsion composition, comprising:
  - A.) a continuous phase, comprising:
    - i.) an emulsifying crosslinked siloxane elastomer; and
    - ii.) a solvent for the emulsifying crosslinked siloxane elastomer;
  - B.) at least one discontinuous phase, comprising:
    - i.) solid particles

wherein the discontinuous phase has a droplet size distribution range of from about 0.1 microns to about 100 microns and wherein the particles are uniformly distributed on the skin independent of skin topography.
2. The cosmetic composition of Claim 1 wherein said composition further comprises a skin conditioning agent selected from the group consisting of exfoliants, emollients and mixtures thereof.
3. The cosmetic composition of Claim 1 wherein said discontinuous phase is selected from the group consisting of polyhydric alcohol, water and mixtures thereof.
4. The cosmetic composition of Claim 3 wherein said polyhydric alcohol is selected from the group consisting of propylene glycol, dipropylene glycol, polypropylene glycol, polyethylene glycol, sorbitol, hydroxypropyl sorbitol, hexylene glycol, glycerin, 1,3-butylene glycol, 1,2,6-hexanetriol, ethoxylated glycerin, propoxylated glycerin and mixtures thereof.
5. The cosmetic composition of Claim 1 wherein said composition further comprises an emulsifier.
6. The cosmetic composition of Claim 5 wherein said emulsifier is polyoxyalkylene copolymer.

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7. The cosmetic composition of Claim 6 wherein said polyoxyalkylene copolymer is dimethicone copolyol.
8. The cosmetic composition of Claim 1 wherein said solid is selected from the group consisting of inorganic solid particles, organic solid particles and mixtures thereof.
9. The cosmetic composition of Claim 8 wherein said solid particle is selected from the group consisting of gums, chalk, Fuller's earth, talc, kaolin, iron oxide, mica, sericite, muscovite, phlogopite, synthetic mica, lepidolite, biotite, lithia mica, vermiculite, magnesium carbonate, calcium carbonate, aluminum silicate, starch, smectite clays, alkyl and/or trialkyl aryl ammonium smectites, chemically modified magnesium aluminum silicate, organically modified montmorillonite clay, hydrated aluminum silicate, fumed silica, aluminum starch, octenyl succinate barium silicate, calcium silicate, magnesium silicate, strontium silicate, metal tungstate, magnesium, silica alumina, zeolite, barium sulfate, calcined calcium sulfate, calcium phosphate, fluorine apatite, hydroxyapatite, ceramic powder, metallic soap, colloidal silicone dioxide, boron nitride, polyamide resin powder, cyclodextrin, polyethylene powder, methyl polymethacrylate powder, polystyrene powder, copolymer powder of styrene and acrylic acid, benzoguanamine resin powder, poly(ethylene tetrafluoride) powder, carboxyvinyl polymer, cellulose powder, ethylene glycol monostearate, titanium dioxide, zinc oxide, magnesium oxide, interference pigments, and mixtures thereof.
10. The cosmetic composition of Claim 1 wherein said composition further comprises a preservative.
11. The cosmetic composition of Claim 10 wherein said preservative is selected from the group consisting of disodium EDTA, phenoxyethanol, methyl paraben, propyl paraben, imidazolidinyl urea, sodium dehydroacetate, para-hydroxybenzoic acid, hydantoin, propionate salts, quaternary ammonium compounds, benzyl alcohol, and mixtures thereof.
12. The cosmetic composition of Claim 1 wherein said composition further comprises fillers.

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13. The cosmetic composition of Claim 1 wherein said composition is in the form of a foundation, mascara, concealer, eye liner, brow color, eye shadow, blusher, lip cream, lip gloss, lip paint or lipstick.
14. A cosmetic composition comprising:
- (i) from about 0.1% to about 15%, by weight of the composition, of emulsifying crosslinked siloxane elastomer having an average particle size less than 20 microns;
  - (ii) from 10 to 80%, by weight of the composition, of a solvent for the crosslinked siloxane elastomer;
  - (iii) optionally, from 0 to 50%, by weight of the composition, of skin conditioning agent; and
  - (iv) optionally, from above about 0 to about 95%, by weight of the composition, of water
- wherein the composition contains at least about 1% air.